BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MARY SOMRAK	)	
Claimant	)	
	)	
VS.	)	
	)	
AKAL SECURITY	)	
Respondent	)	Docket No. **1,026,000**
	)	
AND	)	
	)	
INS. CO. OF STATE OF PENNSYLVANIA	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) request review of the June 1, 2009, Award by Administrative Law Judge Rebecca A. Sanders. The Board heard oral argument on September 18, 2009.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for the claimant. William G. Belden of Merriam, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a September 24, 2004, accident. In the June 1, 2009 Award Administrative Law Judge (ALJ) Sanders found claimant sustained a 10 percent whole person functional impairment for injuries claimant sustained to the right lower extremity and low back. Moreover, the ALJ determined claimant sustained a 27 percent wage loss, a

40.35 percent task loss, and a 33.7 percent work disability.[1] The ALJ indicated claimant was entitled to receive temporary total disability for the 100-week period of February 14, 2005, through January 15, 2007, but the award was computed using 137 weeks. Finally, the ALJ did not find that claimant's incontinence and gynecological problems were related to the accident.

Respondent contends the ALJ erred by (1) using 137 rather than 100 weeks of temporary total disability benefits in computing the Award; (2) finding claimant sustained a work disability when she found another job earning at least 90 percent of her pre-injury wage and, therefore, her wage loss allegedly was caused by a later work-related accident; and, (3) finding respondent was responsible for a $3,264.90 medical bill at Geary Community Hospital because the bill allegedly includes charges that are unrelated to claimant's work-related injuries.

Claimant first maintains there is no evidence in the record that indicates claimant reached maximum medical improvement on January 15, 2007. She does, however, acknowledge she began working for another employer, Eagle Support Services Corp. (Eagle), on March 12, 2007, and that it might be inappropriate to award temporary total disability compensation during such employment. Second, claimant argues she obtained part-time work with Eagle but could not perform the labor portion of her duties. Accordingly, claimant argues the accident she sustained while working for Eagle, which injured her hip and leg, has no legal significance in this claim because she could not continue that job as it exceeded her restrictions and abilities.

Next, claimant asserts the ALJ did not err by finding that respondent was responsible for paying the $3,264.90 medical expense incurred with Geary Community Hospital as the bill represents treatment "for back pain, leg and foot problems as well as swelling in her right leg and foot and some vaginal swelling through her rectum."[2] In short, claimant requests the Board to award her temporary total and permanent partial disability benefits totaling $100,000 as her wage loss was 79 percent at the time of the regular hearing and her task loss exceeds the 40.35 percent determined by the ALJ.

The issues before the Board on this appeal are:

(1) Did the ALJ err by using 137 weeks instead of 100 weeks of temporary total disability benefits in computing the Award?

(2) What is the nature and extent of claimant's injury and disability?

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[1] A permanent partial general disability, as measured by K.S.A. 44-501e, that is greater than the functional impairment rating.

[2] Claimant's Brief filed August 21, 2009, at 6.

(3) Did the ALJ err by requiring respondent to pay a $3,264.90 medical bill at Geary Community Hospital?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

Claimant began working for respondent in March 2004 as an armed security guard. Claimant, among other activities, guarded the gate at Fort Riley and inspected vehicles; entered computer data; checked decals, registrations, driver licenses and proof of insurance; and wrote day passes.

On the evening of September 24, 2004, claimant fell down a staircase at work while running from a snake. That night claimant awoke with pain, discoloration, and swelling in her right foot. Upon reporting her symptoms to respondent, claimant was referred to the Geary Community Hospital emergency room.

Claimant has endured an extended period of medical treatment as she was eventually diagnosed with chronic regional pain syndrome (CRPS), also known as reflex sympathetic dystrophy (RSD) in her right foot and leg. In addition, shortly after the accident claimant developed low back complaints that she attributed to her altered gait. Claimant also developed incontinence and gynecological issues. Consequently, she has seen numerous doctors and various health care providers including a podiatrist, neurologists, physical therapists, orthopedic surgeon, dermatologist, pain management specialists, chiropractor, gynecologist, gastroenterologist and perhaps other specialists.

Claimant left work due to her injuries beginning September 27, 2004. Respondent, however, terminated claimant's employment as of September 30, 2004, due to an alleged reduction in force.

In addition to the September 2004 accident at work, claimant also was injured in September 2005 when her car was rear-ended while she was sitting at a gas pump. Claimant was next injured in April 2007 when another car collided with hers at an intersection. According to claimant, the 2005 accident occurred either on her way to or on her way from picking up prescription medications associated with her 2004 accident. And the April 2007 accident occurred on her way to see the physician who was treating her 2004 injuries. Finally, in May 2007, claimant was again injured when she was accidentally knocked into a wall of sandbags while working for another employer. Although the accidents aggravated her right leg and low back symptoms, claimant testified that in all three later instances those symptoms returned to their baseline. In other words, claimant indicated her right leg and low back symptoms were only temporarily aggravated by those later incidents.

When claimant last testified, she was not working although she had worked intermittently following her September 2004 accident. For example, in 2005 claimant worked part-time for a short period of time at the jewelry and perfume counters of the Fort Riley PX. She did not know how much she earned in that job.[3] In 2006, claimant worked approximately 10 hours a week for a couple of months earning from $8.50 to $9 per hour as an art instructor at U.S.D. #475 (Junction City) in an after school program for the Boys and Girls Club.

In early 2007, claimant found employment with Eagle as a part-time, temporary employee who was hired to play the part of a villager in training exercises for soldiers at Fort Riley who were preparing to deploy to Iraq and Afghanistan. That job ended as a practical matter on or about May 2, 2007,[4] when claimant was knocked into a wall of sandbags and injured.

Claimant testified she did not know she would be expected to perform physical labor working for Eagle but was later told that was part of her job.[5] She further indicated that she did not violate her work restrictions at Eagle by doing any work outside the restrictions she had been given by her doctors.[6] In any event, during some point of her short tenure with Eagle, claimant was promoted to a supervisory position and "did less work."[7]

The job with Eagle paid $10.13 per hour for labor and driving, $13.29 per hour for role-playing, and $14.62 per hour for a supervisor/role-player. In addition to those hourly rates, Eagle paid another $3.01 per hour, which was designated as health and welfare. Claimant testified she applied with Eagle in either late January or early February 2007 and shortly afterwards was hired. She first attended a three week language class before beginning her part as a villager. Other than the language class, claimant believes her work at Eagle began around mid-March 2007. She also testified that she worked for Eagle approximately two and one-half months before sustaining the May 2, 2007, accident.

The pay records from Eagle are in evidence. Those records show that in 2007 claimant earned the following amounts: $415.66 for 25.5 hours for the two week period ending February 23; $1,498.04 for 104 hours for the two week period ending March 9; $1,321.48 for 82 hours for the period ending March 23; $1,125.70 for 71 hours for the

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[3] R.H. Trans. at 85.

[4] Although there are many references in the record to a May 2, 2007 accident, claimant actually testified on March 12, 2009, at page 46 that her accident actually occurred a couple of days before the May 2, 2007 date.

[5] R.H. Trans. at 87.

[6] Somrak Depo. (Mar. 12, 2009) at 28.

[7] R.H. Trans. at 89.

period ending April 6; $1,279.56 for 78.5 hours for the period ending April 20; $2,824.89 for 144.5 hours for the period ending May 4; and $277.10 for 17 hours for the period ending May 18. Those records also show that claimant was paid the sum of $40.89 in 2008 for personal leave and that Eagle paid her the total sum of $8,783.32 for the work she performed in 2007.[8]

Claimant did not return to work for Eagle after her May 2007 accident.

At the time of the November 2008 regular hearing, claimant was working for U.S.D. #475 at Fort Riley in a school cafeteria where she put out napkins, silverware, helped prepare some food and cleaned tables. Claimant began performing that particular part-time job on October 29, 2008, working for about 15 hours per week for $8.10 per hour (or $121.50 per week). But when claimant testified in March 2009, she was no longer working as she felt she could not keep up with the pace of the work and her treating physician, Dr. Fatma Radhi, had taken her off work again. Claimant believed she had worked for the school district that particular time for a couple of months.[9]

Temporary Total Disability Benefits

The parties agree claimant received 137 weeks of temporary total disability benefits. As indicated above, the ALJ found that claimant was entitled to receive only 100 weeks of temporary total disability benefits representing the period of February 14, 2005, through January 15, 2007. Nonetheless, the award was computed using 137 weeks.

Respondent contends the ALJ was correct in determining claimant's temporary total disability benefits should have been discontinued after January 15, 2007. The Board agrees. First, Dr. Terrence Pratt, who performed an independent medical evaluation at the request of ALJ Bryce Benedict, testified without objection that he had reviewed the January 2007 medical records from one of claimant's treating physicians (Dr. Radhi) and those records indicated claimant was at maximum medical improvement (MMI) as of January 15, 2007.[10] The Board also notes that claimant applied for employment with Eagle in either late January or early February 2007 and that she was hired and earned more than $8,700 over 7 pay periods with each pay period representing 2 weeks.

The Workers Compensation Act (Act) addresses temporary total disability compensation, as follows:

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[8] Somrak Depo. (Mar. 12, 2009), Ex. 10.

[9] *Ibid.* at 34-35.

[10] Pratt Depo. at 19.

> Temporary total disability exists when the employee on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary medical limitations for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, except that temporary total disability compensation shall not be awarded unless the opinion of the authorized treating health care provider is shown to be based on an assessment of the employee's actual job duties with the employer, with or without accommodation.[11]

Considering the entire record, the Board finds that claimant's recovery from her September 2004 accident had reached a plateau by January 15, 2007. Consequently, the Board concludes claimant was not temporarily and totally disabled from engaging in substantial, gainful employment after that date. The Board affirms the ALJ's finding that claimant is entitled to receive 100 weeks of temporary total disability benefits for the period of February 14, 2005, through January 15, 2007. Respondent's payment of temporary total disability benefits for more than 100 weeks may be credited against claimant's award in the manner set forth in K.S.A. 44-525(c).

Functional Impairment Rating

The ALJ determined claimant sustained a 10 percent whole person functional impairment for the injuries claimant received to her right lower extremity and low back that Dr. Pratt related to the September 2004 accident. Conversely, the ALJ held that the evidence did not establish a link between claimant's September 2004 accident and her incontinence and gynecological problems.

Several doctors testified in this claim. Dr. John Calkins, who practices obstetrics and gynecology, saw claimant at least four times in 2006. Dr. Calkins testified about claimant's vulvar pain disorder, which he felt was caused by bacterial infection due to incontinence. The doctor, however, did not have an independent opinion about whether claimant's incontinence was related to claimant's RSD.[12] Dr. Calkins did not provide an opinion regarding claimant's functional impairment.

Dr. C. Reiff Brown, who is board-certified in orthopedic surgery, testified as claimant's medical expert witness. Dr. Brown examined claimant in November 2007 and determined claimant had a 30 percent whole person functional impairment under the Fourth Edition of the AMA *Guides.* The doctor seems to have reached that impairment rating in two different ways. First, Dr. Brown testified claimant had a 10 percent whole person impairment for lumbar radiculopathy and between a 10 to 20 percent whole person

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[11] K.S.A. 44-510c(b)(2).

[12] Calkins Depo. at 19.

impairment for fecal and urinary incontinence.[13] But later, the doctor indicated claimant had a 10 percent whole person impairment *possibly* for incontinence, 10 percent whole person impairment for radiculopathy, and another 10 percent whole person impairment for RSD.[14]

Dr. Brown acknowledged, however, he did not have enough information to form an opinion about whether claimant's incontinence was related to her September 2004 accident. Moreover, he stated that question fell within the expertise of either a gynecologist or urologist. In addition, the doctor admitted he did not believe he could provide a very accurate impairment rating for claimant's condition.[15] In any event, Dr. Brown felt claimant was permanently and totally disabled from engaging in any substantial and gainful employment. Dr. Brown stated:

> I believe [claimant] to be permanently totally disabled as a result of this injury. It is necessary for her to keep her sitting time to more than 15 minutes, standing time no more than 20 minutes, and ambulate several blocks one time daily. It is necessary for her to frequently lie down to relieve back pain as well as leg and foot pain during the day. She should be allowed to continue under the care of Dr. Peloquin and Dr. Radhi for regulation of medications, activities, etc.[16]

Moreover, Dr. Brown found claimant was unable to perform any of the work tasks she had performed in the 15 years before her accident. In providing that opinion, the doctor reviewed the task list prepared by claimant's vocational expert, Doug Lindahl, as well as the list prepared by respondent's expert, Terry Cordray.

Respondent's medical expert, Dr. Atul T. Patel, is board-certified in physical medicine and rehabilitation. He examined claimant in August 2007 and testified that he did not find that claimant had any symptoms of CRPS or RSD. Dr. Patel opined that claimant sustained a soft tissue injury to the right foot in September 2004 but that she did not sustain any permanent injury. Likewise, the doctor determined claimant neither required permanent work restrictions nor lost the ability to perform any of her former work tasks due to that accident.[17] (The only task list that Dr. Patel reviewed was the one prepared by Mr.

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[13] Brown Depo. at 17.

[14] *Ibid.* at 42.

[15] *Ibid.* at 17.

[16] *Ibid.*, Ex. 2 at 3.

[17] Patel Depo. at 16-17.

Cordray.) Finally, the doctor stated claimant's gynecological problems and urinary tract infections most likely arose from her pre-existing medical condition.[18]

Dr. Patel stated he is familiar with the AMA *Guides* but that he probably did not refer to that book in evaluating claimant as he found no impairment. When asked if a chronic back sprain would carry a rating under the Fourth Edition of the AMA *Guides*, the doctor indicated he would have to review the publication.[19]

ALJ Bryce Benedict requested Dr. Terrence Pratt to evaluate claimant. Dr. Pratt, who is board-certified in physical medicine and rehabilitation, examined claimant in late April 2008. The doctor determined that claimant's right lower extremity had been effected by CRPS and that she had radicular symptoms from the low back. Dr. Pratt indicated he could not relate claimant's incontinence to her 2004 work-related accident and that a urologic assessment could be helpful.

Using the Fourth Edition of the AMA *Guides,* Dr. Pratt measured claimant's impairment as 5 percent to the whole person for the right lower extremity and 5 percent to the whole person for the low back, which he combined for a 10 percent whole person impairment.[20] The doctor also determined claimant had lost the ability to perform 53.1 percent (26 of 49) of the former work tasks identified by Mr. Lindahl and 27.6 percent (8 of 29) of the tasks identified by Mr. Cordray.[21]

The ALJ adopted Dr. Pratt's opinions regarding claimant's functional impairment. The Board likewise finds Dr. Pratt's opinions the most persuasive. The doctor evaluated claimant as a disinterested and unbiased expert. Moreover, his opinions seem reasonable and credible in light of the other evidence in the record. Consequently, the Board affirms the ALJ's finding that claimant sustained a 10 percent whole person impairment for the right lower extremity and back injuries she sustained as a result of her September 2004 accident.

Nature and Extent of Disability

The ALJ imputed a post-injury wage of $420 per week and found that claimant sustained a wage loss of 27 percent. Averaging that 27 percent with a task loss of 40.35, the ALJ awarded claimant a 33.7 percent permanent partial general disability. Since that award, however, the Kansas Supreme Court has clarified the law. Consequently, the award must be modified using claimant's *actual* wage loss.

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[18] *Ibid.* at 15.

[19] *Ibid.* at 32-33.

[20] Pratt Depo. at 10.

[21] *Ibid.* at 27 & 32.

Because back injuries are not included in the schedule of K.S.A. 44-510d, claimant's permanent disability benefits are determined by K.S.A. 44-510e(a), which provides in part:

> The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, **has lost the ability to perform the work tasks** that the employee **performed** in any substantial gainful employment **during the fifteen-year period preceding the accident**, **averaged** together **with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.** In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. (Emphasis added.)

After the parties filed their briefs with the Board, the Kansas Supreme Court issued its decision in *Bergstrom.*[22] In that decision the Kansas Supreme Court interpreted K.S.A. 44-510e and ruled that it is not proper to impute a post-injury wage when computing the wage loss in the permanent partial general disability formula. The Kansas Supreme Court stated, in pertinent part:

> When a workers compensation statute is plain and unambiguous, the courts must give effect to its express language rather than determine what the law should or should not be. The court will not speculate on legislative intent and will not read the statute to add something not readily found in it. If the statutory language is clear, there is no need to resort to statutory construction.[23]
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> K.S.A. 44-510e(a) contains no requirement that an injured worker make a good-faith effort to seek postinjury employment to mitigate the employer's liability. *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 320, 944 P.2d 179 (1997), and all subsequent cases that have imposed a good-faith effort requirement on injured workers are disapproved.[24]
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> We can find nothing in the language of K.S.A. 44-510e(a) that requires an injured worker to make a good-faith effort to seek out and accept alternate employment. The legislature expressly directed a physician to look to the tasks that the employee performed during the 15-year period preceding the accident and reach an opinion of the percentage that can still be performed. That percentage is averaged together with the difference between the wages the worker was earning at the time of the injury and the wages the worker was earning after the injury. The legislature then placed a limitation on permanent partial general disability compensation when

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[22] *Bergstrom v. Spears Manufacturing Company*, 289 Kan. 605, 214 P.3d 676 (2009).

[23] *Id.*, Syl. ¶ 1.

[24] *Id.*, Syl. ¶ 3.

> the employee "*is engaging* in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury." (Emphasis added.) K.S.A. 44-510e(a). The legislature did not state that the employee is required to *attempt to work* or that the employee *is capable of engaging in work* for wages equal to 90% or more of the preinjury average gross weekly wage.[25]

In the absence of *Bergstrom*, claimant's efforts to find other employment and the injury she sustained while working for Eagle would have been issues to consider in determining whether claimant's actual post-injury wages or her wage-earning ability should be used in computing her permanent partial general disability under K.S.A. 44-510e. But *Bergstrom* makes clear that good faith is not an element of the permanent partial general disability formula and that actual post-injury earnings must be used in computing her permanent partial general disability. In effect, *Bergstrom* clarifies that it is of no concern why a worker is earning less than 90 percent of his or her pre-injury average weekly wage because the unambiguous language of K.S.A. 44-510e requires a comparison between the worker's *actual* pre- and post-injury earnings. Hence, *Bergstrom* stands for the proposition that we should follow the specific, unambiguous language of K.S.A. 44-510e rather than carving out exceptions to using actual wage loss on the basis of what may or may not be more equitable.

Assuming *arguendo* that a post-injury wage could be imputed despite the language in *Bergstrom,* it is doubtful the Board would impute a post-injury wage under these facts and circumstances. In other words, assuming claimant's accident on May 2, 2007, has any relevance in determining claimant's post-injury wages, it is highly questionable whether that accident would affect claimant's work disability[26] benefits. First, claimant indicated she primarily injured her left hip in the May 2007 accident as the increased back and right leg symptoms she immediately experienced returned to their baseline. Next, claimant was unable to perform the labor portion of the job with Eagle as the heavy lifting and handling of bags of equipment were beyond her restrictions from the September 2004 accident. In short, the work claimant performed for Eagle was not physically demanding and the job was merely a part-time, temporary position. Moreover, there is no evidence that the May 2007 accident gave rise to any permanent work restrictions as claimant does not recall that the treating physician (Dr. McAtee) placed any permanent restrictions upon her when she was released in January 2008 from treatment.[27] Finally, the Board finds claimant's major obstacle to returning to work in the open labor market at this juncture are the restrictions from her September 2004 accident.

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[25] *Id.*, at 609-610.

[26] A permanent partial general disability under K.S.A. 44-510e(a) that is greater than the functional impairment rating.

[27] R.H. Trans. at 75.

As indicated above, claimant's temporary total disability benefits expired on January 15, 2007. For the period after that date, claimant had a 100 percent wage loss until she began working for Eagle. According to Eagle's wage records, claimant earned $8,783. 32 for the seven pay periods from February 9 through May 18, 2007. But it appears that claimant only worked one week of her first two-week pay period and only one week in her last. Accordingly, the Board finds claimant worked 12 weeks for Eagle and, therefore, she averaged $731.94 per week ($8,783.32 / 12), which is greater than the stipulated pre-injury average weekly wage of $568.95. Hence, from February 16, through May 2, 2007, claimant had no wage loss. Following May 2, 2007, however, claimant had another 100 percent wage loss as she was no longer working. That wage loss continued until October 29, 2008, when claimant began working in a cafeteria for U.S.D. #475 earning approximately $121.50 per week. Consequently, for the approximate two months that claimant performed that job she had a 79 percent wage loss. But when that job terminated, claimant's wage loss reverted to 100 percent.

In summary, claimant has the following post injury wage loss for the following periods:

> From January 16, 2007, through February 15, 2007, claimant's wage loss is 100 percent; from February 16, 2007, through May 2, 2007, claimant has no wage loss; from May 3, 2007, through October 28, 2008, claimant's wage loss is 100 percent; from October 29, through December 28, 2008, claimant has a 79 percent wage loss; and, finally, a 100 percent wage loss.

The Board is persuaded by Dr. Pratt's recommended work restrictions and limitations. According to Dr. Pratt, claimant is to do no prolonged walking or standing; change positions while sitting; limit sitting to 60-90 minute intervals; limit standing to 30-60 minutes; do no frequent bending or twisting of her back; limit lifting to 15 pounds; limit pushing and pulling to 30 pounds; and not do any activities on an uneven surface. Using those restrictions, the doctor determined claimant had lost the ability to perform 53.1 percent of the former work tasks identified by Mr. Lindahl and 27.6 percent of the former tasks identified by Mr. Cordray, which is an average of 40.35 percent. The Board affirms the ALJ's finding that claimant sustained a 40.35 percent task loss due to the injury she sustained while working for respondent.

Averaging claimant's various post-injury wage loss percentages with her 40.35 task loss yields the following permanent partial general disability percentages for the following periods:

> From January 16, 2007, through February 15, 2007, claimant's work disability is 70 percent (100 percent wage loss and 40.35 percent task loss); from February 16, 2007, through May 2, 2007, claimant's permanent partial general disability is 10 percent, which is based upon her whole person functional impairment rating; from May 3, 2007, through October 28, 2008,

> claimant's work disability reverts to 70 percent (100 percent wage loss and 40.35 percent task loss); from October 29, through December 28, 2008, claimant's work disability is 60 percent (79 percent wage loss and 40.35 percent task loss); followed by a 70 percent work disability (100 percent wage loss and 40.35 percent task loss).

Because the wage loss portion of the work disability formula changes several times, as claimant's wage loss changed, the percentage of work disability varies. Simply stated, after every change in the percentage of disability, a new calculation is required to determine if there are additional disability weeks payable. If so, the claimant is entitled to payment of those additional disability weeks until fully paid or modified by a later change in the percentage of disability. This calculation method requires that for each change in the percentage of disability, the award is calculated as if the new percentage was the original award, thereafter the number of disability weeks is reduced by the prior permanent partial disability weeks already paid or due.

But the amount of benefit does not change whether the benefits are for work disability or functional impairment, instead when the injured worker's status changes due to changes in the work disability percentage or from work disability to functional impairment the only change under the current statute is the length of time the employee is entitled to receive benefits. As noted the claimant's work disability changes several times but due to the accelerated pay out formula and because the compensation rate does not change, it makes no difference in the calculation of this award or in the final amount due, therefore, this award simply uses the final percentage of work disability to compute the total number of weeks of permanent partial disability compensation.

$3,264.90 Medical Bill at Geary Community Hospital

Respondent maintains it should not be required to pay the $3,264.90 medical expense claimant incurred at Geary Community Hospital when she was admitted on February 15, 2006. A close look at that billing shows that it represented charges for administering Toradol, which claimant testified was given to her for pain relief. Indeed, claimant's testimony is uncontradicted that her treating physician had advised her to go to the emergency room whenever she needed pain medications. The Board also notes the largest portion of the billing, or $2,423, represents an MRI. The documents attached to the billing, which was introduced as an exhibit, indicate claimant had chronic low back pain and the MRI was taken of the lumbosacral spine.

The Board finds it is more probably true than not true that the billing and charges in question relate to the symptoms claimant experienced as a result of her September 2004 accident. Accordingly, the Board affirms the ALJ's determination that the bill is the responsibility of respondent.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Rebecca A. Sanders dated June 1, 2009, is modified as follows:

Claimant is entitled to 100 weeks of temporary total disability compensation at the rate of $379.32 per week or $37,932 followed by permanent partial disability compensation at the rate of $379.32 per week not to exceed $100,000 for a 70 percent work disability, which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of March 2010.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
William G. Belden, Attorney for Respondent and its Insurance Carrier
Rebecca A. Sanders, Administrative Law Judge